



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 23, 2015

Mr. Scott Clark
311 Hauss Square, Room 119
New Albany, IN 47150

Re: Formal Complaint 15-FC-248; Alleged Violation of the Access to Public Records Act by the City of New Albany; Honorable Jeff Gahan, Mayor and Controller Linda Moeller

Dear Mr. Clark,

This advisory opinion is in response to your formal complaint, which alleges the City of New Albany, the Honorable Jeff Gahan, Mayor and Linda Moeller, City Controller violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* As of the writing of this complaint, the City has not responded despite an invitation to do so. Pursuant to Ind. Code § 5-14-3-3, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 11, 2015.

BACKGROUND

Your complaint dated September 3, 2015 alleges the City of New Albany ("City") violated the Access to Public Records Act by failing to provide the records you requested.

On August 4, 2015, you sent a request for records to the New Albany Animal Control and Shelter. You requested copies of the statement of Income and Expenses for the years of 2012 and 2013; all Fund transactions reports showing revenue for 2012-2014; and checks or evidence of payment supporting the interlocutory agreement between the City and County. On August 10, 2015, you were advised by Ms. Moeller that your complaint had been received and that further communications would occur within 10 days.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Code § 5-14-3-1. The City of New Albany is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

This complaint alleges that the City has taken an unreasonable amount of time to respond to your request. Reasonableness depends on the type and amount of records requested; however, a time frame of one month without providing additional communication is likely unreasonable.

Further, the City's non-response clearly was not intended to be a denial under the APRA because the Town requested additional time from this office to respond to the complaint. This additional time has lapsed without any further correspondence from the City.

In my previous opinion related to this situation, *15-FC-191*, I encouraged the Town to make every effort to provide the documents you have requested. The City of New Albany has been aware of your request, in some form or another, since the filing of your previous complaint. The fact that it has been four months the City has received that complaint makes it clear that the City has ignored its duty to serve the public and therefore is in violation of the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of New Albany has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt
Public Access Counselor



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Cc: Ms. Linda Moeller